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ENVIRONMENTAL IMPACT REQUIREMENTS IN THE STATES: NEPA'S OFFSPRING

CENTER FOR CALIFORNIA PUBLIC AFFAIRS

PREPARED FOR
ENVIRONMENTAL PROTECTION AGENCY

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Thaddeus C. Trzyna

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ENVIRONMENTAL IMPACT REQUIREMENTS IN THE STATES:

NEPA'S OFFSPRING

By

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Contract No. 68-01-1818
Program Element 1HA095

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FOREWORD

The widespread use of environmental impact analysis as a means of achieving Federal agency decision-making responsive to environmental concerns was initiated by the passage of the National Environmental Policy Act of 1969. The Act required that Federal agencies prepare statements assessing the environmental impact of their major actions significantly affecting the human environment. In subsequent years Federal agencies developed procedures for the preparation of environmental impact statements, often requiring similar analyses and statements from local governments and the private sector as a requirement for the award of Federal permits or grants. In addition, some States adopted environmental impact statement requirements. Recent revisions of guidelines for the preparation of Federal impact statements, issued by the Council on Environmental Quality, have defined clear requirements as to what can be expected in impact statements from Federal agencies. However, such uniformity of procedure and approach has not been extended below the Federal level on either Federal agency requirements or individual State requirements. Further, while the guidelines may specify what is desired in Federal impact statements, technical approaches to meeting these objectives may not always be available and universally acceptable.

As a part of its series of Socioeconomic Environmental Studies, the Environmental Protection Agency, Office of Research and Development, is conducting research whose objectives are to:

- Improve the technical quality of environmental impact analyses in areas of Agency responsibility;
- Improve the ability of the Agency to provide substantive technical review of environmental impact statements prepared by other agencies; and
- Improve the effectiveness of the use of environmental impact analyses in influencing decision-making at all governmental levels.

This publication is the second of a three-part series of reports on environmental impact analysis requirements several State governments have instituted. The report is a comparative analysis of requirements in the various States, updating a summary published as the first report[1] of the series. The third report will provide a detailed analysis of the environmental impact reporting program instituted in California, the most extensive of the State programs. This series of studies is being conducted by Thaddeus C. Trzyna and his associates at the Center for California Public Affairs (an affiliate of The Claremont Colleges), 226 W. Foothill Boulevard, Claremont, California 91711, under contract to the Ecological Studies and Technology Assessment Branch, Implementation Research Division.

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ABSTRACT

There is a growing trend in the States to adopt requirements for environmental impact statements like those in the National Environmental Policy Act of 1969. Fifteen States and Puerto Rico now require impact statements for a wide range of activities significantly affecting the quality of the environment, and several others apply the process to limited classes of projects. At least twenty other States have such requirements under consideration.

The State requirements are summarized and compared to each other and to the national act. Some key issues are discussed: contents of the impact statement, applicability to private projects and local governments, relation to land use regulation, enforcement, and citizen participation.

There are many problems involved in adapting the impact requirement to State needs and institutions. More evaluation of State programs is needed, and a new organization should be created to facilitate communication among the States on administration of impact statement programs.

This report was submitted in partial fulfillment of Contract No. 68-01-1818, Program Element 1HA095, under the sponsorship of the Office of Research and Development, Environmental Protection Agency.

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SECTION I

CONCLUSIONS

1. General requirements for environmental impact statements have been adopted by fifteen States and Puerto Rico. However, implementation of these programs has been slow, and their net effect so far appears to be fairly small, except in California.

2. The effectiveness of many State programs is severely limited because the environmental impact requirement does not extend to private activities or to actions of local governments (or to either).

3. The States generally fail to provide for adequate enforcement of the environmental impact requirement, and enforcement by citizen action is usually hampered by a lack of mechanisms for informing and involving the public. This leaves the way open for superficial analyses, after-the-fact rationalizations, or failure to prepare any impact statement at all.

4. An environmental impact statement requirement is not redundant in States which have strong land use controls; the two programs are mutually supportive.

5. While there are many differences among the various State programs, so far there have been only a few really innovative departures from the Federal model.

6. There is widespread interest in NEPA-type State legislation, and with good reason. The potential value of environmental impact requirements in the States is at least as great as at the Federal level. However, before a State goes ahead with such a program, it should be aware of the choices and the problems involved. More evaluation of State programs is needed, and there should be some mechanism for communication among the States in this expanding and important field.

SECTION II

RECOMMENDATIONS

1. A new national professional association or information clearinghouse should be established to promote better communication on the problems of developing and administering environmental impact statement programs. Participation in this organization could be open to Federal, State and local officials, and to persons outside government who have special expertise or interest in the subject. The organization might be established under the auspices of the Council of State Governments, with the encouragement of the Council on Environmental Quality and the Environmental Protection Agency.

2. The Federal Government should sponsor independent research on the successes and failures of State environmental impact requirements. This research should emphasize the problems of enforcing the requirement, involving the public in the review process, and applying the program to private projects and local governments. The relationship between the impact analysis process and land use planning and regulation should also be studied.

3. In funding such research, the Government should give priority to evaluating the innovative programs of three States:

a. California, which has the most extensive program. Here, more information is needed on the adequacy of impact statements and their role in influencing decisions. A legal analysis of court decisions under the California Environmental Quality Act would also be useful.

b. Massachusetts, which (like California) applies the impact requirement to a wide range of activities, including private projects and local government actions. This State's enforcement provisions are of special interest.

c. Minnesota, focusing on the role of the State Environmental Quality Council, which has broad powers to force compliance with the requirement, and which can veto a proposal if the impact statement indicates that approval would be contrary to State environmental policy.

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4. The Federal Government should provide for wide dissemination of the results of these studies among State officials and citizens' groups.

SECTION III

INTRODUCTION

There is a growing movement in the States to adopt requirements for environmental impact statements patterned after those established at the Federal level by the National Environmental Policy Act of 1969 (NEPA). This report summarizes the status of environmental impact procedures in the States (Section IV), examines some key issues involved in developing and carrying out such procedures and how they have been dealt with by the various States (Section V), and discusses the need for more research and communication on State impact programs (Section VI).

A companion report on the California Environmental Quality Act, to be issued early in 1974, will discuss in greater detail the problems of administering a State environmental impact procedure, with recommendations on how other States might institute similar programs with minimum disruption of essential activities.

Our survey of the State requirements included analysis of State laws, regulations and other documents; personal communications with officials in all fifty States, as well as selected citizens' environmental organizations, discussions with State and Federal officials; review of published commentary on NEPA and the State acts; and participation by the author in a workshop on State environmental policy acts at the Second National Symposium on State Environmental Legislation, held at Arlington, Virginia, April 10-12, 1973.[2]

Because the practical effect of the laws and executive orders described here is not always clear, this report has some important limitations. First of all, most of the State environmental impact requirements are quite recent. In some cases, they are not yet implemented; in others, detailed guidelines have not yet been issued in final form.

Second, administration of many of the State environmental policy acts is certain to be challenged in the courts. NEPA already has been the basis of over 400 lawsuits[3], and the California Environmental Quality Act

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of several dozen. In a number of cases, judicial interpretations have led to major changes in the way the national or State acts are implemented. And the basis for some key decisions has been the declaration of policy contained in a law, rather than its operative provisions[4]. We have made no attempt to analyze these policy declarations.[5]

Third, without first-hand knowledge of how a law is being administered, or at least the benefit of objective analysis, it is hard to evaluate the actual effect of any law. We were unable to make personal observations outside California, and our survey of the other States was hampered by an almost total lack of published research.

The information in this report is believed to be correct as of October 15, 1973. Sources of further information will be found in the references. A list of our contacts in the States is included in Appendix A.

SECTION IV

NEPA AND ITS OFFSPRING

No single law has had as great an impact on environmental decisionmaking in the United States as the National Environmental Policy Act of 1969[6]. NEPA accomplished several things. First, it declared a broad national policy for environmental protection[7]. Second, it created certain "action-forcing" procedures to insure that the policy is carried out[8]. Third, it established a Council on Environmental Quality in the Executive Office of the President.[9]

Of the action-forcing provisions in NEPA, the most innovative and far-reaching is a requirement, in Section 102 (2) (C), that Federal agencies prepare an environmental statement in advance of "every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment." These statements must include certain specified elements, including a discussion of alternatives to the proposed action, and they must be circulated for comment to other Federal agencies, affected State and local governments, and the public.

The primary purpose of this process is to force full disclosure of the environmental consequences of a proposed action, thus alerting agencies, the public, and ultimately the President and the Congress to the environmental risks involved. An important and intended result is to build into the decisionmaking processes of Federal agencies a continuing consideration of environmental factors.[10]

Although NEPA applies only to Federal actions and not directly to actions of State or local governments, State and local agencies are involved significantly in the Federal environmental impact statement (EIS) process. Approval of Federal funding for many State and local projects (a highway, for example) may require an impact statement under NEPA. Also, State and local authorities are asked to comment on Federal impact statements on projects affecting their areas[11]. But as important as this involvement is, there is another effect of NEPA which, in the long run, may have a far

more profound impact on the States. The adoption by States of "little NEPAs" causes the environmental impact statement procedure to be applied to a wide range of State and local actions that are not subject to the Federal law. This not only affects environmental decisions below the national level; it can also transform the State and local processes of arriving at such decisions. This factor probably will become more apparent as the various States accumulate more experience with their impact requirements.

NEPA was signed on January 1, 1970--the first law of the new decade. Even before it was enacted, it attracted the attention of environmentalists at the State level, and bills for State environmental policy acts, including EIS procedures, were introduced in many State legislatures. Only two such laws were enacted in 1970 (in Puerto Rico and California), but by the end of 1971, eight States and the Commonwealth of Puerto Rico had adopted broad EIS requirements by statute or executive order. Three other States joined the ranks in 1972, and four more in the following year, so that by October 1973 the list included fifteen States and Puerto Rico[12].

In addition to the States which have mandated general EIS procedures, several States require impact statements to be filed for certain limited classes of projects. Arizona, for instance, specifies that an EIS be prepared for proposed water-oriented development projects. In Delaware, applicants for coastal zone permits must submit an EIS for proposed manufacturing projects. Georgia and New Jersey apply the procedure to certain toll roads. And in Nevada, there is a special EIS provision for power plant siting[13].

There is widespread interest in NEPA-type State legislation, and at least twenty other States have had environmental impact requirements under consideration. To aid the States in developing such legislation, the Council of State Governments has adopted a Suggested State Environmental Policy Act (Appendix B).

The recent report of the Task Force on Land Use and Urban Growth also endorsed the concept of a State EIS requirement:

> An environmental review process at the state level analogous to that required of federal agencies is desirable, for it is the nature and importance of proposed actions, rather

> than the identity of the actor, that ought to determine the scope of review. State review becomes even more important with the enactment of revenue-sharing. Whereas before federal agencies were responsible for satisfying NEPA's requirements in administering categorical grant programs, now, if no similar mechanism exists on the state level, the hard-won objectives embodied in NEPA are in danger of being ignored.[14]

The following summary of the programs of the sixteen States that have adopted general environmental impact statement requirements describes the most important and most innovative features of those programs and, to the extent that information was available, the progress that has been made in implementing them.

CALIFORNIA

California was the first State to establish an EIS requirement patterned after NEPA (although Puerto Rico's law preceded it by a few months). The California Environmental Quality Act of 1970[15] applies to actions of local, as well as State, agencies, and also to private projects for which State or local governmental permission is required. Because it is the oldest and broadest in effect of the State acts and because it has been the subject of considerable litigation, the California law has attracted a good deal of attention from the national press and from officials of other States.

Much of that attention has surrounded the California Supreme Court's ruling in the Friends of Mammoth v. Board of Supervisors of Mono County case[16]. In that decision, handed down in September 1972, the Court held that an EIS must be prepared before a governmental entity approves a private project which is subject to public permission and which could have a significant effect on the environment. The case at issue involved County approval of a condominium at a mountain resort. It had been assumed by most observers that private projects were not included within the EIS requirement. But the Court noted that NEPA was used as a pattern for the California act, and the key provision in both acts--the environmental impact statement--was the same. Observing that the Federal guidelines would require an EIS under similar circumstances, the Court concluded

that under the California law State and local agencies must file an EIS before acting on a private project.

The Friends of Mammoth decision resulted in confusion over the status of private projects already in process, and this caused considerable alarm in the construction industry, the building trades and the financial community. Numerous lawsuits were filed or threatened, and some officials called for amending the Environmental Quality Act so that it would not apply to private projects. Intensive negotiations among legislators, developers and environmentalists led to the enactment of a compromise measure in December 1972. This measure added a number of clarifications and new provisions to the 1970 law, but it had little effect on the most important features of the act, including the Court's interpretation. It also granted retroactive exemption to projects already built or under way, and imposed a 120-day moratorium on implementation of the EIS requirement.

The Secretary of the State Resources Agency, in consultation with the Office of Planning and Research, part of the Governor's Office, is responsible for issuing guidelines for implementation of the EIS requirement and for approval of categorical exemptions. The first set of guidelines was issued in February 1973[17]. Proposed amendments to the guidelines have been circulated[18] and it is expected that they will be issued in final form in late 1973. Local governments were required to adopt similar guidelines and procedures by April 6, 1973[19].

CONNECTICUT

An executive order signed by Governor Thomas Meskill in October 1972[20] requires an EIS to be prepared by State agencies recommending or initiating actions which may significantly affect the environment. Earlier in 1972, Governor Meskill had vetoed a bill for a State environmental policy act that would have required an EIS to be prepared for private projects licensed by the State, as well as projects carried out by State agencies, on the ground that it would have "presented administrative problems of the highest order."

In mid-1973, the Governor signed the Connecticut Environmental Policy Act[21], which will not take effect until February 1, 1975. This law will require impact statements to be prepared for State projects and projects "funded in whole or in part by the State"[22]. Under both the executive order and the statute, the State

Planning Council is charged with reviewing the statements and comments made on them and making recommendations to the Governor. Guidelines have been issued in draft form.[23]

HAWAII

Hawaii's EIS requirement, currently limited to State projects, was established by an executive order signed by Governor John A. Burns in August 1971[24]. The review process is coordinated by the Office of Environmental Quality Control in the Governor's Office, which issued guidelines in October 1971[25]. Typically, impact statements have dealt with such matters as State-sponsored housing projects; roads, highways, and related facilities; harbors and boat launch ramps; school siting and construction; development of State parks; and dredging.

Several bills have been introduced in the Legislature over the past two years to give the EIS requirement a statutory base. The Temporary Commission for Statewide Environmental Planning has proposed a strong State environmental policy act that would extend the impact statement process to local government and to private projects.

INDIANA

Indiana's environmental policy act[26], approved in February 1972, generally follows NEPA, but provides specifically that it shall not be construed "to require an environmental impact statement for the issuance of a license or permit by any agency of the State." The Governor's Office and the Environmental Management Board are responsible for coordinating the program and reviewing impact statements. However, the law has not yet been implemented. The Environmental Management Board is developing policies and guidelines which are expected to be acted upon in early 1974.

MARYLAND

The Maryland Environmental Policy Act, enacted in 1973[27], requires environmental impact statements to be prepared by State agencies on State actions significantly affecting the quality of the environment beginning July 1, 1974. Responsibility for

carrying out the program is given to the Governor or his designated agent.

MASSACHUSETTS

Massachusetts enacted an EIS requirement in 1972, which took effect on July 1, 1973[28]. The law applies to "any work, project, or activity" of "any agency, department, commission, or authority of the commonwealth or any authority of any political subdivision thereof." The guidelines issued by the Secretary of Environmental Affairs[29] define "project" as including not only governmental activities, but also publicly permitted private projects. Impact reports are to be submitted to the Secretary of Environmental Affairs, who is required to "issue a written statement indicating whether or not in his judgment said reports adequately and properly comply with the provisions of this section."[30]

MICHIGAN

A directive to department heads issued by Governor William G. Millikan in December 1971[31] was superseded by a more formal executive order in 1973[32]. It requires State agencies to prepare impact statements on "major state activities which affect the environment." Guidelines issued by the State Advisory Council for Environmental Quality define a "major state action" as "any policy, administrative action, or construction project proposed by an agency of the State"[33], The term "administrative action" includes issuance of permits[34]. The program is coordinated by the Department of Environment and Natural Resources. The advisory council has been considering recommending legislation to give the EIS procedure a statutory base.

MINNESOTA

Minnesota's environmental policy act, approved in 1973[35], requires an EIS to be prepared "where there is potential for significant environmental effects resulting from any major governmental action or from any major private action of more than local significance"[36], The Minnesota Environmental Quality Council is charged with adopting guidelines and regulations for the program by January 1, 1974[37] and coordinating

the processing of statements among local, State and Federal agencies.

The Council is authorized to require an EIS for "any action or project not referred to in its guidelines and regulations."[38] The law also provides that upon receiving a petition requesting an EIS on a particular action, the Council shall review the petition and at its discretion require an impact statement to be prepared. If the Council finds an EIS to be inadequate, it can demand that it be revised.[39]

A very significant feature of the Minnesota law is that the Environmental Quality Council is authorized to reverse or change a proposed action if it determines that the action would be inconsistent with the declaration of policy contained in the act.[40]

MONTANA

The Montana Environmental Policy Act, approved in 1971[41], requires that an environmental impact statement be included in "every recommendation or report on proposals for projects, programs, legislation and other major actions of state government."[42] The Environmental Quality Council is responsible for coordinating the program, reviewing impact statements, and issuing guidelines.[43] According to the guidelines, "Private sector enterprises are affected in cases where a proposed action requires a license, permit, lease, or other entitlement from the state. If the action is controversial or significantly affects the human environment, the involved agency must prepare an EIS."[44]

NEW MEXICO

New Mexico's Environmental Quality Control law, enacted in 1971[45], requires an impact statement to be included in "every recommendation or report on proposals for legislation and other state actions."[46] The law also created a Council on Environmental Quality, but it did not give specific responsibility for the EIS program to that body. According to the State Planning Office, the vagueness of the law created many problems of interpretation.

In 1973, the Legislature suspended the EIS requirement for one year and asked the Council to recommend legis-

lation for a new environmental policy act. The Council has voted to recommend that the new measure require impact statements from State agencies on actions significantly influencing the environment, and the Legislature is expected to act on a new law early in 1974.

NORTH CAROLINA

The North Carolina Environmental Policy Act of 1971[47] requires impact statements to be made on State agency proposals for "legislation and actions involving expenditures of public monies for projects and programs significantly affecting the quality of the environment."[48] In addition, the law authorizes (but does not require) local governments to "require any special purpose unit of government and private developers of a major development project" to submit an EIS.[49] The term "major development project" includes but is not limited to "shopping centers, subdivisions and other housing developments, and industrial and commercial projects, but shall not include any projects of less than two contiguous acres."[50] By mid-1973, only one local government, the Town of Holden Beach, had adopted such a requirement[51]. The North Carolina Council on State Goals and Policy is charged with reviewing impact statements. The Department of Administration has issued guidelines for the program.[52]

The North Carolina law originally was enacted as a two-year experiment. In a 1972 report to the Legislature,[53] Governor Robert W. Scott said he believed the measure had "proved to be a valuable tool for insuring that actions of state government reflect the aspirations of our people for an environment of high quality," and he recommended that it be made permanent, with certain modifications. These included deleting the requirement that an EIS be prepared on agency proposals for legislation; adding a provision stating that an EIS must be submitted in the "early planning stages" of a project, rather than after basic decisions have been made; and requiring environmental impact analyses to be included in the annual work programs of State agencies.

Because a key legislative committee decided that the act was still experimental and needed more review, the Legislature voted early in 1973 to extend the law until 1977, rather than make it permanent.[54]

PUERTO RICO

Puerto Rico's Public Environmental Policy Act[55] approved on June 18, 1970, only six months after NEPA was signed, was the first law in any State or Territory to require environmental impact statements. It is almost identical to the national act. The law is administered by the Environmental Quality Board in the Office of the Governor, which has issued detailed guidelines for the program.[56] Under those guidelines, impact statements are required for legislation proposed or reported on by Commonwealth agencies and "projects and continuing activities directly undertaken by commonwealth agencies; supported in whole or in part through commonwealth contracts, grants, tax exemptions, subsidies, loans, or other forms of financial assistance [,or] involving a commonwealth lease, permit, license, certificate or other entitlement for use." An EIS is also required for "the adoption, amendment or repeal of plans, policies, regulations, guidelines, norms, or procedures;" for decisions relating to mining concessions; and for "any proposed action that is likely to be highly controversial on environmental grounds."

TEXAS

Procedures for preparation, processing, and review of impact statements in Texas are set forth in a "Policy for the Environment"[57] adopted on January 1, 1973 by the Interagency Council on Natural Resources and the Environment, of which Governor Preston Smith is chairman. This policy "neither requires nor mandates its member agencies, but rather suggests and solicits the cooperation and coordination of its participants to appraise and improve the environmental effects of their activities and to develop new initiatives to abate environmental problems." Impact statements are suggested for "project proposals" of State agencies. The Division of Planning Coordination in the Governor's Office coordinates the program.

VIRGINIA

The Virginia Environmental Policy Act, approved in March 1973[58], requires State agencies to prepare impact statements on State construction projects costing $100,000 or more. The Commissioner of

Conservation, Development and Natural Resources coordinates the program. The law specifically excludes highway and road projects from the EIS requirement[59]. According to the Governor's Office, this was done because most, if not all, highway projects having a significant impact on the environment are subject to the requirements of NEPA.

WASHINGTON

Washington's State Environmental Policy Act, approved in 1971,[60] is patterned closely after NEPA. Impact statements are required on "proposals for legislation and other major actions" and of "all branches of government of this state, including state agencies, municipal and public corporations, and counties."[61] The law appears to apply to private actions for which a governmental permit is required, as well as public projects. The program is coordinated by the Department of Ecology, which has issued guidelines,[62] and the Ecological Commission. The Department reports that implementation of the EIS requirement has been somewhat sporadic, due mainly to a lack of strict regulatory definitions and procedures for determining what constitutes a "major action," when environmental effects are "significant," and when a proposal should get full study by the Department.

Two other Washington laws involve the EIS process. The Highway Construction Environmental Review Law of 1971,[63] which predates the State Environmental Policy Act, requires an impact statement on State highway projects which the highway department determines will significantly affect environmental quality, and on all highways in new locations or requiring additional right of way. While it does not require impact statements, the Shorelines Management Act of 1971[64] is administered to "frequently require" an EIS to accompany the review of shoreline permits sanctioned by local officials.

WISCONSIN

The Wisconsin Environmental Policy Act, approved in 1971[65], applies to "agencies of the state" and generally follows the wording of Section 102 of NEPA. However, there are two important differences. Each EIS must "contain details of the beneficial aspects of the proposed project, both short term and long term, and the

economic advantages of the proposal."[66] Also, "Every proposal other than for legislation shall receive a public hearing before a final decision is made."[67]

While the Environmental Policy Act does not specifically require an EIS for private activities, a companion law[68] authorizes the Department of Natural Resources to require an EIS from "an applicant for a permit or statutory approval" which the Department is enpowered to grant, provided that the area affected is more than 40 acres in extent or the estimated cost of the project exceeds $25,000.[69]

The Department of Administration has issued guidelines for implementing the Environmental Policy Act.[70] Copies of impact statements are to be sent to the Governor's Office and the Department of Natural Resources[71]. Governor Patrick J. Lucey has created an interagency Environmental Impact Statement Coordinating Committee to assist agencies in implementing and defining the language of the act.[72]

SECTION V

SOME KEY ISSUES

In considering an environmental impact requirement, a State is faced with some important decisions about the scope of the program, who will be responsible for it, how it will be carried out, and how it will relate to other local, State and Federal environmental protection activities.[73]

It should be kept in mind that the closer a State provision is to the language of NEPA and the NEPA guidelines, the more likely it is that State courts will draw on case law under NEPA and similar State acts in interpreting it.[74]

Among the key issues involved in developing an impact statement program are the content of the EIS, the application of the requirement to private activities and local governments, its relation to land use controls, enforcement, and citizen participation.

ELEMENTS OF THE ENVIRONMENTAL IMPACT STATEMENT

The National Environmental Policy Act requires five specific points of information to be covered in a Federal environmental impact statement:

(i) The environmental impact of the proposed action,

(ii) Any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) Alternatives to the proposed action,

(iv) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) Any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.[75]

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Expanding on these points, the guidelines issued by the U. S. Council on Environmental Quality for the preparation of Federal impact statements[76] specify that three other elements shall be included in an EIS: (1) a description of the proposed action and a statement of its purposes, along with a discussion of the environment affected; (2) an explanation of how the proposed action relates to land use plans, policies, and controls for the affected area; and (3) an indication of what other interests and considerations of Federal policy are thought to offset any adverse environmental effects outlined in the EIS.[77]

There are few departures from the national pattern in the States in the points to be covered in an impact statement. The State acts and executive orders do not always follow the exact language of NEPA, but if they are looked at together with their implementing guidelines and procedures and compared with the NEPA guidelines, there are only minor differences in their practical effect.

California's act[78] specifically requires that the EIS include a discussion of "Mitigation measures proposed to minimize the impact" of a project. Similar clauses are included in the Maryland[79], Massachusetts[80], North Carolina[81] and Virginia[82] acts, and in the Suggested State Environmental Policy Act adopted by the Council of State Governments.[83] While NEPA itself does not specifically address this problem, the NEPA guidelines cover it under the category of "alternatives to the proposed action."[84]

The California law[85] and the model act[86] specifically require an analysis of "the growth-inducing impact of the proposed action." The NEPA guidelines also place strong emphasis on discussing the effects of a proposed action on population and growth.[87] California Deputy Attorney General Nicholas Yost notes that

> The whole concept embodied in this requirement. . . is surely one of the lessons repeatedly learned in this time of environmental awareness. Not only does a highway or an airport cause certain environmental disruptions incident to its construction and not only do the automobiles or aircraft which use it cause certain air and noise pollution consequences, but the facility itself fosters population growth

> and resulting land use changes. We have only to look at the cities sited at harbors and along rivers and railroads and at the strip development along highways to realize that these secondary consequences of a facility may be the most profound ones. California's explicit requirement that these impacts be evaluated cannot but be a good thing.[88]

Several States require an EIS to include an evaluation of primary and secondary effects of a proposal, but no other State specifically calls for an evaluation of growth impact.

Five States specify that the EIS include a discussion of the economic impact of the proposed action: Michigan,[89] Minnesota,[90] Montana,[91] Washington,[92] and Wisconsin.[93] The Michigan act, for example, says that, "Where appropriate, a discussion of the economic gains and losses including the effect on employment, income levels, property values, taxes, and the cost of alternatives to the proposed action" should be included in the EIS. The Federal guidelines are not as specific. They provide only that an impact statement should deal with "changed patterns of social and economic activities" under the discussion of secondary consequences of a proposal.[94] The model act has no special reference to economic impact. Some local jurisdictions in California require an economic analysis in an EIS, and a bill has been introduced in the California Legislature to add a discussion of economic impact to the EIS elements already specified in that State's act.

Texas and Wisconsin require that the "beneficial" aspects of a proposal be discussed. Under the Texas executive order, the "expected beneficial environmental impacts of the proposed actions" are to be set forth in the EIS.[95] Wisconsin requires inclusion of "details of the beneficial aspects of the proposed project, both short term and long term" to be included in the impact statement.[96] The NEPA guidelines contain no special reference to beneficial aspects, but require agencies to "assess the positive and negative effects of the proposed action."[97]

The Minnesota law contains two other departures from the general model. The EIS must include an assessment of the "impact on state government of any federal controls associated with the proposed actions" and a discussion of the "multistate responsibilities associated

with the proposed actions."[98]

The statutes or executive orders of Hawaii,[99] Indiana,[100] Montana,[101] New Mexico,[102] Puerto Rico,[103] and Washington[104] follow to the letter NEPA's list of elements to be included in the EIS. Except as noted above, the laws or executive orders of the other States specify elements similar, but not identical, to those listed in the national act.

APPLICABILITY TO PRIVATE PROJECTS AND LOCAL GOVERNMENTS

All of the sixteen States which have general EIS procedures require impact statements for actions or projects undertaken directly by State agencies.[105] There are very large differences among the States, however, in their application of the EIS process to local government actions and to private activity for which a governmental permit is required.

Whether the State EIS requirement extends to local governments and whether it includes public permission of private activity are key issues, separate but overlapping. The private sector conducts a great range of activities that might have harmful environmental consequences, and many of them are subject to some form of discretionary governmental approval. Some of the most important controls over private actions, particularly those relating to the use of land, are administered not by the States but by counties, cities, towns and special purpose units of local government. And apart from their role of regulating private activities, local governments are responsible for facilities and services intimately related to environmental quality, for example, sewage and solid waste disposal, construction of new streets and roads, water supply, and flood control.[106] Thus, the real impact of a State's EIS program largely depends on whether it applies to local governments and/or private activities.

The Task Force on Land Use and Urban Growth strongly recommended that States require impact statements for both private and public projects at the local as well as State level.[107] The Council of State Governments' Suggested State Environmental Policy Act applies the EIS requirement to private projects or activities involving governmental permission[108] but gives a choice as to whether such a law should apply only to State actions or local ones as well.[109]

Only four States seem to apply the EIS requirement both to private activities and to local governments. California's law is the only one that is explicit on both points. It says that an impact statement shall be prepared on private activities involving the issuance of a "lease, permit, license, certificate, or other entitlement for use by one or more public agencies."[110] The term "public agencies" includes local governments and regional bodies as well as State agencies.[111]

The Massachusetts act applies to State agencies and political subdivisions of the State.[112] While the law is silent on the issue of private activities, the guidelines specify that an EIS must be prepared for any governmental activity "which involves the issuance of a lease, permit, license, certificate, or any entitlement for use by an agency."[113]

Washington's law applies to "all branches of government of this state, including state agencies, municipal and public corporations, and counties."[114] The guidelines imply that private activities are subject to the EIS requirement.[115] The Puerto Rico act places the impact statement requirement on "all agencies of the government",[116] defined in the guidelines as including any "public authority, public corporation, or municipality."[117] The guidelines require an EIS to be filed on activities "involving a commonwealth lease, permit, licence, certificate or other entitlement for use."[118]

Four other States explicitly require an impact statement to be prepared on private activities for which a State permit is required: Michigan,[119] Minnesota,[120] Montana,[121] and Wisconsin.[122] However, Minnesota's law requires an environmental analysis only for a "major private action of more than local significance." It should be noted that Indiana's law provides that it shall not be "construed to require an environmental impact statement for the issuance of a license or permit by any agency of the state."[123]

Several of the States use words identical or similar to those in NEPA in describing the EIS requirement, and presumably the NEPA guidelines would be considered by the courts in deciding whether they apply to private activities.[124] Although NEPA itself does not deal explicitly with the issue of private activities, the NEPA guidelines require an EIS to be filed on actions "involving a Federal lease, permit, license certificate

or other entitlement."[125]

None of the States applies the EIS requirement to local governments without also specifying that an impact statement be prepared on private activities subject to public permission. While the North Carolina law authorizes local governments to require an EIS for certain private projects, this provision has had almost no use.[126] It appears that the North Carolina act does not extend to public projects of local agencies.

Some of the State laws and executive orders are vague on the application of the EIS requirement to local governments or private projects. For example, the new Maryland law applies to State agencies "and any such bodies created by the state."[127] Does this include local governments? The recently-enacted Minnesota law applies to private actions "of more than local significance . . . where no governmental permit is required."[128] What kinds of activities does this encompass? The laws of some States which do not specifically extend the EIS requirement to local agencies say that an impact statement must be prepared for governmental projects paid for wholly or partly out of the State treasury. For example, Connecticut requires an EIS on a project "funded in whole or in part by the state."[129] Many local projects (roads, for instance) are built with State assistance. Does this mean that such local activities are subject to an impact statement? Such questions may be answered in the guidelines yet to be issued by these States, or in the courts.[130]

RELATION TO LAND USE REGULATION

An important issue in implementing an EIS requirement in the States is how it will relate to ongoing governmental processes, particularly to existing mechanisms for regulating land use. Much of the variation among the States in EIS programs derives from differences in established approaches to land use planning and management.

Some observers believe that an EIS program might be redundant in States with strong state-level land use regulation. This is an important point in view of the recent trend toward shifting responsibility for key land use decisions from local authorities to the

States,[131] and in view of wide support in the Congress and the Administration for Federal legislation to encourage a stronger role for the States in this area.

Three States have adopted statewide land regulatory systems: Hawaii, Maine, and Vermont. There has been little interest in Maine or Vermont in adopting a State EIS requirement. Officials of those States account for this by pointing to their land use control laws. But neither law appears to provide as substantial an informational tool as the impact statement.

Vermont's law[132] requires environmental factors to be considered prior to any State approval of significant development proposals. There is no provision for a formal, written environmental analysis similar to an EIS, but State "environmental advisors" are required to make on-site inspections and submit their comments to the district commission of the State Environmental Board. A State review committee furnishes the district commission with a position paper representing the views of reviewing agencies.[133]

Under Maine's Site Location Law,[134] the Environmental Improvement Commission, which is the regulatory agency, relies for its information on a proposed project on the developer's permit application (which must include certain specified data on environmental effects) and on review forms submitted by other State agencies, some of which may undertake on-site investigations.[135]

Hawaii, on the other hand, which has had State land use controls since 1961, is also considering adopting a broad EIS requirement. Under the Hawaiian Land Use Law,[136] the State Land Use Commission has divided the entire State into four zones: urban, rural, agricultrual, and conservation. The uses to be permitted in each of these zones are specified in the law. The Commission's major function is to consider applications for zone boundary changes and special use permits.[137] The proposed Hawaii Environmental Policy Act would appear to require preparation of an impact report on such applications.

California, which applies the EIS process to private projects subject to local government approval, also has one of the nation's strongest local planning laws. Some local planning directors in California express the opinion that they have had authority for many years under the zoning and subdivision laws to require information about the environmental effects of proposed

developments, and that the EIS program superimposes an unnecessary and burdensome requirement on the planning system. However, many planners feel that even with strong regulations and well-staffed local planning units, the EIS provides an additional and valuable means of forcing environmental factors to be taken into account.

The environmental impact statement represents an operational, case-by-case approach to many of the same goals intended under comprehensive planning and zoning. In California, it is being used in some jurisdictions as a means of balancing long-term environmental factors against more immediate economic and political demands in the process of making individual decisions on land use development. In this sense, the EIS can provide a vehicle for stabilizing the integrity of the comprehensive plan and strengthen the more traditional means of land use regulation.

ENFORCEMENT

All of the States which have an EIS requirement designate an agency to coordinate the program, or at least to develop detailed guidelines. But that agency usually has no specific authority to insure that an impact statement is prepared, or to reject inadequately written reports. Only one State (Minnesota) provides for the veto of a proposal found to be inconsistent with the policies set forth in its environmental policy act.

This absence of clear enforcement authority follows the Federal example. Under NEPA responsibility for compliance rests with the agency proposing the action. NEPA says that copies of Federal impact statements must be filed with the Council on Environmental Quality, but does not say what CEQ is to do with them.[138] The Council has no veto power over agency proposals and cannot reject an inadequate statement.

CEQ is responsible for issuing the NEPA guidelines,[139] and that document requires Federal agencies "to be responsive to a request by the Council" for the preparation and circulation of an EIS.[140] Otherwise, the Council's role is advisory. It assists agencies in preparing their own procedures for implementing NEPA and carries on "continuing consultation with agencies

on their performance."[141]

However, it should be noted that under "Title II of NEPA, the Council is designated as environmental advisor to the President, and that decisions of environmental agencies are subject to review by the Chief Executive. In addition, Section 309 of the Clean Air Act[142] requires the Environmental Protection Agency to review and comment on Federal agency proposals subject to the EIS requirement. If the Administrator of EPA determines that any such proposal is unsatisfactory from the standpoint of public health or welfare or environmental quality, he must publish his determination and refer the matter to CEQ.

No doubt the absence of a "policeman" in the Federal system is the main reason many impact statements have been found to be inadequate. CEQ has expressed concern "about upgrading the quality of information and analysis presented in impact statement,"[143] and the General Accounting Office, after examining a number of statements from several Federal agencies, concluded that their usefulness was impaired by several common failings: inadequate discussion of the identified environmental impacts, inadequate treatment of reviewing agencies' comments, and inadequate consideration of alternatives and their environmental impacts.[144]

Michael McCloskey, who as Executive Director of the Sierra Club has been involved in several major disputes over the adequacy of impact statements, recently wrote that

> . . . the lack of any rejection authority is turning the requirement of environmental impact reports into a hollow gesture. [CEQ] must be given clear authority, at the very least, to reject inadequately prepared reports. It is now relying on persuasion alone to have poor reports redone. . . [CEQ] still does not have authority to keep agencies from violating the National Environmental Policy Act.[145]

Officials report similar problems with compliance under the State laws. For example, the Puerto Rico Environmental Quality Board in its 1972 annual report says that "compliance with the EIS requirement is still far from universal" and that "some commonwealth agencies are participating in the process more fully than others."[146] The 1972 annual report of the

Montana Environmental Quality Council notes that agencies "that wish to minimize or ignore the environmental effects of their actions naturally consider the process irritating and burdensome" and points to "adherence to old decision-making habits" as a major problem. "In some instances," the Montana report goes on to say, "the EIS is an after-the-fact exercise used to justify decisions already made. Consideration of alternatives is frequently inadequate, and rarely is the ultimate alternative--taking no action at all because of environmental consequences--considered."[147]

Six States have given responsibility for their EIS programs to environmental councils or boards similar to the Federal CEQ.[148] In four States, this function is assigned to the governor's office or the state planning unit within the governor's office,[149] and in two States, to the natural resources department.[150] California and Wisconsin split the responsibility between the governor's office and the natural resources agency, and Washington divides it between the Department of Ecology and the Ecological Commission. North Carolina assigns the function to its Council on State Goals and Policy. Typically, these agencies coordinate the EIS program among the various units of State government, issue guidelines, and receive copies of impact statements, or at least notification that a statement has been prepared.

In California, for example, guidelines for the EIS program are developed by the planning unit of the Governor's Office and adopted by the Secretary of the Resources Agency.[151] State and local agencies must file a notice of the completion of an EIS with the Secretary;[152] however, there are no sanctions for failing to file these documents.[153] In fact, the law provides specifically that failure to file notice with the Resources Agency "shall not affect the validity of the project."[154] Moreover, the law does not say what should be done with notices of completion, and the Resources Agency takes no action on them beyond filing them as a permanent record.[155] There is no provision in the California system for rejection of an inadequate EIS.[156]

In practice, the California system is much weaker than the Federal one. Although the Federal system may rely mainly on persuasion to get agencies to comply with NEPA, the U. S. Council on Environmental Quality does

have a staff to monitor agencies' activities, call their attention to violations, and work with them in improving their procedures. The California Resources Agency has no such staff.

In most of the States, "enforcement" of the impact statement program is limited, as in California, to requiring a copy or notice of each impact statement to be furnished to the coordinating agency. What should be done with the statement once it is received is usually not specified. However, five States provide for some degree of discretion by higher authority. In Hawaii, the Governor "approves" the EIS.[157] In North Carolina, the Council on State Goals and Policy has the choice of accepting the EIS, approving it conditionally contingent on changes specified by the Council, or submitting it to the Governor for final disposition.[158] In Maryland, the Governor may delay for up to 90 days any action which the EIS indicates will threaten the public health and welfare.[159] In Massachusetts, the Secretary of Environmental Affairs "shall issue a written statement indicating whether or not in his judgment said reports adequately and properly comply" with the law.[160]

The Minnesota law is the strongest. It authorizes the Minnesota Environmental Quality Council not only to require revision of inadequate impact statements and delay implementation of an action, but to "reverse or modify the decisions or proposal where it finds, upon notice and hearing, that the action or project is inconsistent" with the broad statement of environmental policies and standards set forth in the law.[161]

CITIZEN PARTICIPATION

Since the agencies responsible for State environmental impact programs usually lack specific authority to insure compliance. the major burden of enforcing EIS requirements falls on citizen groups. By bringing deficiencies to the attention of administrators or applying political pressure, citizens have frequently been successful in persuading an agency to prepare an EIS when it has not done so or to revise an inadequate document. And at least at the Federal level and in California, agency officials are increasingly responsive to public sentiment because of the large number of court decisions supporting citizen demands and the ever-present threat of litigation.

At the Federal level, enforcement by citizen action has been important in establishing NEPA's viability. While NEPA itself says only that copies of an EIS and agency comments on it "shall be made available to . . . the public,"[162] the Federal guidelines describe in some detail how and when the public is to be involved. CEQ has made a vigorous effort to provide mechanisms for citizen participation at the agency level and to publicize and facilitate the availability of impact statements. Still, CEQ notes that

> Unfortunately, some agencies are still slow to implement fully the citizen involvement requirements of the NEPA process. Too often the burden rests with the public to find out what is going on rather than with the agency to keep the public informed.[163]

The Federal guidelines were recently amended to increase opportunities for citizen participation in the early stages of planning and decision-making.[164]

Like NEPA, most of the State laws and executive orders require only that copies of impact statements be made available to the public. California's act, for example, provides only that an EIS be available for public inspection and that a citizen may obtain a copy by paying for its actual cost.[165] Several of the State laws make no reference to the public at all. How citizens are to be included in the EIS process, if at all, is left to the State guidelines which, in many cases, are not very specific.

For instance, California's guidelines say only that agencies "shall make provisions in their [EIS] procedures for wide public involvement, formal and informal, consistent with their existing activities and procedures."[166] Michigan's regulations call for "maximum use of public involvement procedures and public hearings. . . A mechanism to inform the public of the availability of [impact statements] should be developed by all agencies."[167] North Carolina specifies that agencies should consult with the public "if deemed appropriate."[168] And Puerto Rico's guidelines contain the rather ironic statement that, "After allowing time for public response to the final EIS, the issuing agency proceeds with its action."[169]

In order to have any influence on an impact statement

(and, ultimately, on how the EIS is used in deciding whether to go ahead with a proposed action), citizens must, first of all, know that it exists, and second, have sufficient time to study and comment on it. Some formal mechanism for public participation might also be helpful.

How does the public find out that an EIS is ready for comment? At the Federal level, brief summaries of draft and final impact statements, along with instructions on how to obtain them and related information, are published weekly in the Federal Register and monthly in CEQ's 102 Monitor. Apparently, only two States issue similar periodic, centralized lists of impact statements: California and North Carolina.[170] Another means of informing the public is through notices in newspapers, but apparently only two States require them. The Wisconsin law calls for notice of a hearing on an EIS to be published in a newspaper in the affected area (or, if statewide, in the official State paper), and in that State hearings are held on virtually all impact statements.[171] The Massachusetts guidelines direct agencies to give notice of a draft EIS in a newspaper of general circulation in the area affected and also in a daily statewide paper.[172] The Washington State guidelines specify that a news release be sent to newspapers in the affected area, but that is no guarantee that it would be published.[173] For a time, Puerto Rico used newspaper display advertisements to publicize impact statements, but it discontinued the practice because of its cost.

In the absence of a centralized, periodic list of statements or newspaper advertising, how does an agency inform the public that an EIS is available for comment? The problem is in defining "the public." A few States have attempted to come up with a working definition of the term. Hawaii specifies that an EIS shall be disseminated to "the various concerned agencies and citizens groups."[174] Maryland calls for comment by agencies and "private organizations and individuals with jurisdiction by law, special expertise, or recognized interest."[175] In Montana, the State Environmental Quality Council is required to "consult with such representatives of science, industry, agriculture, labor, conservation organizations, educational institutions, local governments and other groups, as it deems advisable," and to use the services of such organizations "to the fullest extent possible."[176] The Montana guidelines provide that "pre-draft outlines" of impact statements will be circulated to "selected private groups and individuals, and to private groups and individuals whose interests will be significantly affected by the proposed action."[177]

The Washington State Guidelines say that distribution of a draft EIS should be made to citizens and citizens' organizations "who have specifically indicated [an] interest in the proposed action, and have requested the statement."[178] While the Minnesota act makes no special allowance for citizen participation in reviewing impact statements, it contains the interesting provision that if a petition signed by not less than 500 persons is filed with the State Environmental Quality Council, the Council "shall review the petition and, where there is material evidence of the need for an environmental review," require preparation of an EIS.[179]

How much time is given for public review and comment? The NEPA guidelines specify a minimum review period of 45 days (recently changed from 30 days) from the time notice of an EIS is published in the Federal Register.[180] Most States also require such a minimum period, ranging from 20 to 60 days.[181] The California guidelines are an exception. They say only that "adequate time" should be given for review and comment by other agencies and the public. Such vague language invites abuse: one local government in California allows only five days for comment on an impact statement.[182]

What mechanisms have the States created to facilitate public participation? Public hearings are one means of obtaining citizens' comments. Only Wisconsin requires a hearing to be held on every EIS.[183] The California guidelines say that a hearing is a "widely accepted desirable goal" and "should be held" if the sponsor determines that it would further the purposes of the law.[184] Massachusetts agencies are "encouraged" to hold hearings or more informal meetings on impact statements[185] and the Michigan regulations stress "maximum use of public involvement procedures and public hearings."[186] In other States, it appears that public hearings on impact statements are held only if they are otherwise required for the proposed action.

With few exceptions, the States have not made it easy for citizens to have a say in the EIS process. Yet, as Russell Train has said, "An informed, concerned and responsible citizenry is the crucial factor upon which ultimately all environmental progress must depend."[187]

OTHER ISSUES

There are a number of other important questions which the States face in adopting environmental impact requirements.[188] Our report on the California Environmental Quality Act will discuss them in some detail. They include the following:

1. What kinds of governmental actions should be covered by the EIS program (aside from the issue of private projects, discussed above)? Should the requirement apply to regulatory activities and adoption of broad policies and planning documents, as well as public works projects? Should it apply to agency proposals for legislation? Should it extend to so-called "beneficial" activities conducted for the express purpose of protecting the environment, for example, setting air and water quality standards? Should it cover actions which have an indirect but demonstrable effect on the environment, such as electrical rate-setting by a State public service commission or a publicly-owned utility?

2. What special exemptions should be made to the general EIS requirement, if any? Should these be set forth in detail in the law or left to the discretion of the responsible agency? Typical exemptions are for emergency or temporary activities, and for "ministerial" acts, that is, actions in which the agency exercises no discretion, but rather acts in a prescribed manner in accordance with a statutory or regulatory mandate. Some States provide for "categorical exemptions" to be granted administratively; these might include such areas as wildlife preservation programs and experimental and research projects.

3. Should the EIS requirement apply only to "major" actions significantly affecting the environment (as in most States), or to all actions significantly affecting the environment (as in California and Massachusetts)? In practice, how are such terms as "major action," "significant effect," and "environment" defined?

4. If private activities are subject to the EIS requirement, who should write the impact statement? In some cases, draft statements are being prepared by developers or consultants hired by them. If the EIS is written by the agency should the applicant or the public pay for the cost of preparing it?

5. All of the State EIS requirements impose an obligation on the responsible agency to consult with other agencies which have special expertise or interest in a proposed action, on the environmental impacts involved. What procedures can be established to insure that all concerned agencies--State, local and Federal--are given an opportunity to comment? Can the State and areawide A-95 clearinghouses[189] which are already used to process Federal impact statements be used also for the State program?

6. How much will it cost the State to adopt an EIS requirement? This depends largely on the scope of the program. Cost has been a major factor in the reluctance of some States to enact such a procedure. It was given as one of the reasons for the veto of an EIS program in New York.

7. What effect will the new EIS requirement have on developments where construction has started, permits have been issued, or financing has been arranged? Should there be a "grandfather clause?"

8. Should there be a statute of limitations for legal actions brought under the requirement so as not to affect actions already implemented?

9. What happens when a project requires an EIS under NEPA as well as the State program?

SECTION VI

THE NEED FOR EVALUATION AND COMMUNICATION

Officials and citizen environmentalists who are trying to develop environmental impact programs for their States, or who are struggling with the problems of administering existing programs, have few sources of guidance. Our own experience demonstrates this. We had to begin our survey virtually from scratch, and almost all of what we found out about EIS requirements (except from the laws themselves) came in response to letters we sent to officials in the various States. More than a few of those officials wrote back asking for information on what their sister States were doing in the field.[190]

Very little has been published on State EIS requirements other than California's. This is accounted for partly by the newness of some of the programs, but not entirely; most of the requirements described in this report are over two years old. And what has appeared in print (on NEPA as well as the State acts) is generally legal analysis. Not enough attention has been given to how the process is carried out on a day-to-day basis.

The environmental impact statement was a Federal innovation. The States have relied mainly on the Federal example in setting up their own programs, and many of NEPA's faults as well as its strengths have been transferred to the State level. But now the States are starting to play their traditional role as experimental laboratories. In responding to a number of factors--deficiencies in the Federal system, problems peculiar to the States, differences in institutions, citizen demands--they are beginning to depart from the general model and advance the state of the art.

Minnesota's strong enforcement provisions, for example, are an important departure from those in the Federal system. California and Massachusetts, in applying the EIS requirement to all significant (not only "major") actions, public and private, State and local, go far beyond the Federal Government and the other States in the kind and number of activities reached by their programs. Innovations such as these bear close watching. If they succeed, some of them might be adopted at the Federal level as well as by the States. It is important

that the States at least know the choices available to them.

Two needs are apparent. First, there should be study and evaluation of environmental impact programs in the States. We are recommending that the Federal Government sponsor objective research on selected State EIS programs. These studies should be done on the ground by institutions or individuals thoroughly familiar with their States' environmental problems and political systems. They should focus on the practical effects of the programs, rather than their strictly legal aspects. They should emphasize the problems of enforcing the EIS requirement, interagency consultation, involving citizens in the review process, and applying the program to private projects and local governments. The relationship between the environmental impact process and land use planning and regulation should also be studied. Finally, they should take a hard look at results. Does the EIS program work? Are environmental factors brought into the decisionmaking process early enough to make a difference?

At first, this project might be limited to an analysis of the innovative programs of California, Massachusetts, and Minnesota. In California, more information is needed on the adequacy of environmental impact statements and their role in influencing decisions. A legal analysis of court decisions under the California law would also be useful. The impact of the new Massachusetts law, which is similar to California's, also warrants close study. Its enforcement provisions, which are stronger than the California law, merit special attention. In Minnesota, research should focus on an evaluation of the role of the State Environmental Quality Council, which has broad powers to force compliance with the EIS requirement, and which can veto a proposed project if the impact statement indicates that approval would be contrary to State policy--authority that goes far beyond that provided for by other States.

The second need is for a mechanism for communication among the States on the problems of implementing and administering EIS requirements. Officials who need information on what their sister States have done in this new and complex field now have no central source of help to turn to.

Diffusion of innovations among the States depends mainly on the existence of specialized professional

associations of State officials, whose major function is to facilitate communication among the States.[191] The environmental impact process cuts across the traditional lines of specialized communication. In some States, the EIS program is the primary responsibility of an environmental quality council; in others, of the State planning office or the natural resources agency. Furthermore, the process involves officials in a wide range of other agencies as authors or reviewers of impact statements, for example, fish and game experts, highway designers, and public health officers. The only professional interest these people have in common is the EIS process.

Several professional associations have become interested in the problems of State EIS programs: the Council of State Planning Agencies, the American Society of Planning Officials (ASPO), and the National Association of Attorneys General, to mention three. But no existing organization includes even the key people in the States who are involved with impact statements.

We are recommending that a new national professional association be created for officials concerned with EIS programs. Through the usual meetings, newsletters, and special publications, and also through more informal contacts, such an organization could facilitate exchange of information on problems of developing and carrying out the environmental review process. This association should include not only State government officials, but also Federal and local officials who work with impact statements and those who are attempting to develop new requirements. The organization might also include selected representatives of citizens' organizations, lawyers, and scholars. And it might well invite the participation of foreign officials concerned with similar problems.[192] An alternative to such an organization would be a national clearinghouse on EIS programs.

SECTION VII

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All errors of fact, faults of judgment and omissions are the author's responsibility.

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SECTION VIII

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9. NEPA, Sec. 202.

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10. Much has been written about the Federal EIS requirement. The annual reports of the Council on Environmental Quality are basic to an understanding of how the Federal process works. The most comprehensive examination from a legal standpoint is in Frederick R. Anderson's book, NEPA in the Courts: A Legal Analysis of the National Environmental Policy Act (Resources for the Future, Washington, D. C., 1973). See also Steven B. Fishman's article, "A Preliminary Assessment of the National Environmental Policy Act of 1969," Urban Law Annual, 1973, pp. 209-241. Non-legal, as well as legal, material is included in a bibliography available from the Council of Planning Librarians (P. O. Box 229, Monticello, Illinois 61856), "National Environmental Policy Act of 1969 (P.L. 91-190): Bibliography on Impact Assessment Methods and Legal Considerations," Exchange Bibliography no. 415, June 1973.

11. "Preparation of Environmental Impact Statements: Guidelines," 38 Fed. Reg. 20550-20562, August 1, 1973, Sec. 1500.9. This document, issued by the Council on Environmental Quality, is hereinafter cited as the NEPA guidelines or Federal guidelines. It is reprinted in CEQ's 1973 annual report, pp. 416-439.

12. As used in this report, the term "State" applies to Puerto Rico as well as the fifty States. As far as can be determined, none of the other Territories has considered an EIS requirement. Some States use other terms for environmental impact statements, including "environmental impact report" and "environmental assessment." As used in this report, the term "environmental impact statement" includes all such documents.

13. See Appendix A for a complete listing of special EIS requirements.

14. Reilly, William K., ed., The Use of Land: A Citizens' Policy Guide to Urban Growth. Thomas Y. Crowell Company, New York, 1973, p. 206. The task force, funded by The Rockefeller Brothers Fund, was created by the Citizens' Advisory Committee on Environmental Quality, a body established by presidential executive order in 1969.

15. California Environmental Quality Act of 1970,

Cal. Pub. Res. Code Secs. 21000-21001 (hereinafter cited as California law).

16. See note 4 above.

17. "Guidelines for Implementation of the California Environmental Quality Act," California Administrative Register 73, No. 6-B, February 10, 1973, Secs. 15000-15166 (hereinafter cited as California guidelines).

18. "Proposed Amendments to Guidelines for Environmental Impact Reports," memorandum from the Secretary for Resources, August 31, 1973.

19. California law, Sec. 21082. The most comprehensive legal analysis of the amended act to date is Carl J. Seneker, II, "The Legislative Response to Friends of Mammoth," California State Bar Journal, 48, No. 2, pp. 126-189.

20. Executive Order No. 16, October 4, 1972.

21. Pub. Act No. 73-562 (hereinafter cited as Connecticut law).

22. Connecticut law, Sec. 3.

23. "Draft, Guidelines for the Implementation of Executive Order No. 16," transmitted under a memorandum from the Governor to State agencies, December 13, 1972 (hereinafter cited as Connecticut guidelines).

24. Hawaii Executive Order, August 23, 1971 (hereinafter cited as Hawaii executive order).

25. "Instruction Manual for Developing and Processing Draft Environmental Impact Statements," October 1971.

26. Ind. Code 13-1-10 (hereinafter cited as Indiana law).

27. Md. Ann. Code art. 41, Secs. 447-453 (hereinafter cited as Maryland law).

28. Mass. Gen. Laws Ann. ch. 30, Secs. 61-62 (hereinafter cited as Massachusetts law).

29. "Regulations to Create a Uniform System for the Preparation of Environmental Impact Reports," issued by the office of the Secretary of the Commonwealth,

July 6, 1973 (hereinafter cited as Massachusetts guidelines).

30. Massachusetts law, Sec. 62.

31. Michigan Executive Directive 1971-10.

32. Michigan Executive Order 1973-9 (hereinafter cited as Michigan executive order).

33. "Guidelines for Implementing State of Michigan Executive Directive 1971-10," n.d., Sec. 4 (A) (hereinafter cited as Michigan guidelines).

34. Michigan guidelines, Sec. 5 (A) (2).

35. Minnesota Environmental Policy Act, Chap. 412, Laws 1973 (hereinafter cited as Minnesota law).

36. Minnesota law, Sec. 4 (1).

37. Minnesota law, Sec. 4 (2).

38. Minnesota law, Sec. 4 (2).

39. Minnesota law, Sec. 4 (3).

40. Minnesota law, Sec. 4 (9).

41. Montana Environmental Policy Act, Mont. Rev. Codes Ann. Sec. 69-6501 et seq. (hereinafter cited as Montana law).

42. Montana law, Sec. 69-6504 (b) (3).

43. Environmental Quality Council, First Annual Report, pp. 126-130.

44. "Revised Guidelines for Environmental Impact Statements Required by the Montana Environmental Policy Act of 1971," July 21, 1972, Sec. 5 (2) (hereinafter cited as Montana guidelines).

45. Environmental Quality Control law, N. M. Stat. Ann. Secs. 12-20-1 et seq. (hereinafter cited as New Mexico law).

46. New Mexico law, Sec. 12-20-6 (C).

47. North Carolina Environmental Policy Act, N. C. Gen. Stat. Sec. 113 (A) et seq. (hereinafter cited as

North Carolina law).

48. North Carolina law, Sec. 4 (2).

49. North Carolina law, Sec. 8.

50. North Carolina law, Sec. 9 (4).

51. Willey, Joan, A North Carolina Citizen's Guide to Commenting on Environmental Impact Statements. North Carolina State University, Division of Continuing Education (P. O. Box 5125, Raleigh, North Carolina 27607), 1973, p. 2. The text of the Holden Beach ordinance is included in this report.

52. Memorandum from the Governor to State agencies, February 9, 1972.

53. "The North Carolina Environmental Policy Act," a report to the Legislative Research Commission by Governor Robert W. Scott, July 1972.

54. "House Votes EPA Four More Years," Durham Morning Herald, March 29, 1973.

55. Puerto Rico Public Environmental Policy Act, P. R. Laws Ann. tit. 12, Secs. 1121 et seq. (hereinafter cited as Puerto Rico law).

56. "Draft of the Guidelines for Environmental Impact Statements," November 1971 (hereinafter cited as Puerto Rico guidelines).

57. The policy, guidelines, and procedures are contained in "Environment for Tomorrow: The Texas Response," Office of the Governor, Division of Planning Coordination, January 1, 1973.

58. Virginia Environmental Policy Act, Chapt. 384, Acts 1973 (hereinafter cited as Virginia law).

59. Virginia law, Sec. 1 (1) (b).

60. State Environmental Policy Act, Wash. Rev. Code Ann. Secs. 43.21C.010 - 43.21C.900 (hereinafter cited as Washington law).

61. Washington law, Sec. 3 (2).

62. "Preliminary Guidelines for Implementation of the

State Environmental Policy Act of 1971," March 1, 1972 (hereinafter cited as Washington guidelines).

63. Wash. Rev. Code Ann. Secs. 47.04.110 - 47.04.130 (1971).

64. Chap. 286, Laws 1971.

65. Wis. Stat. Sec. 1.11; Chap. 274, Laws 1971 (hereinafter cited as Wisconsin law).

66. Wisconsin law, Sec. 1.11 (2) (c) (6).

67. Wisconsin law, Sec. 1.11 (2) (d).

68. Wis. Stat. Secs. 23.11 (5), 30.19 (4), and 31.06 (3); Chap. 273, Laws 1971. This law was approved on the same date as the Environmental Policy Act.

69. Wis. Stat. Sec. 23.11 (5).

70. "Guidelines for State Agencies under the Wisconsin Environmental Policy Act," n.d. (received January 1973) (hereinafter cited as Wisconsin guidelines).

71. Wisconsin law, Sec. 1.11 (2) (d).

72. Problems of implementing the Wisconsin law are discussed in a report by Jon A. Kusler and Farnum Alston, "Environmental Impact Evaluation Procedures; Some Recommendations for Wisconsin," Institute for Environmental Studies, University of Wisconsin, Madison, December 1972.

73. This is not to say that the drafters of EIS requirements are always aware of the choices available to them; some of the laws and regulations described in this report appear to have been written with little thought about how the requirement would be implemented.

74. For example, in Friends of Mammoth v. Mono County (See note 4), and in City of Roswell v. New Mexico Water Quality Control Commission, 505 P.2d 1237, 4 ERC 1755, 1754, 3 ELR 20181 (N.M. Ct. of App. 1972).

75. NEPA, Sec. 102 (2) (C).

76. See note 11 above.

77. NEPA guidelines, Sec. 1500.8 (a) (8).

78. California law, Sec. 21100.

79. Maryland law, Sec. 451.

80. Massachusetts law, Sec. 62.

81. North Carolina law, Sec. 4 (2) (c).

82. Virginia law, Sec. 2.

83. See Appendix B (Sec. b (b) (6)).

84. NEPA guidelines, Sec. 1500.8 (a) (4).

85. California law, Sec. 21100.

86. See Appendix B (Sec. 5 (b) (7)).

87. NEPA guidelines, Sec. 1500.8 (a) (1) and (a) (3) (ii).

88. Yost, "NEPA's Progeny," see note 5.

89. Michigan executive order, Sec. 7 (b).

90. Minnesota law, Sec. 4.

91. Montana guidelines, Sec. 6.

92. Washington guidelines, Sec. F (2) (B).

93. Wisconsin law, Sec. 1.11 (2).

94. NEPA guidelines, Sec. 1500.8 (3) (ii). Sec. 1500.8 (8) says that agencies which prepare cost-benefit analyses should attach them to the EIS, with an indication of the extent to which environmental costs are not reflected in them.

95. "Environment for Tomorrow" (see note 57), page 16.

96. Wisconsin law, Sec. 1.11 (2).

97. NEPA guidelines, Sec. 1500.8 (a) (3) (i).

98. Minnesota law, Sec. 4.

99. Hawaii executive order, Sec. 1 (b).

100. Indiana law, Sec. 13-1-1-10-3.

101. Montana law, Sec. 69-6504.

102. New Mexico law, Sec. 12-20-6 (C).

103. Puerto Rico law, Article 4 (2) (C).

104. Washington law, Sec. 3 (2) (C).

105. In some cases, certain State agencies or activities are excluded from the requirement. For example, in another statute, California exempts water pollution control agencies (Cal. Water Code, Sec. 13389), and Virginia's requirement extends only to State construction projects, excluding road and highway projects, costing less than $100,000 (Virginia law, Sec. 1 (1) (b)). See also the discussion of categorical exemptions below.

106. On this point, see Eleanor Cohen, ed., Expanding the Environmental Responsibility of Local Government. Center for California Public Affairs (226 W. Foothill Blvd., Claremont, California 91711), 1972.

107. Reilly, The Use of Land (see note 14 above), pp. 205-208.

108. See Appendix B (Sec. 4 (b) (2)).

109. See Appendix B (Secs. 3 (e) and 4 (a)).

110. California law, Sec. 21065 (c).

111. California law, Sec. 21063.

112. Massachusetts law, Sec. 62.

113. Massachusetts guidelines, Sec. 2.4.

114. Washington law, Sec. 3 (2).

115. Washington guidelines, page 9.

116. Puerto Rico law, Art. 4 (2).

117. Puerto Rico guidelines, Sec. 7.

118. Puerto Rico guidelines, Sec. 9 (B) (2).

119. Michigan guidelines, Sec. 5 (2).

120. Minnesota law, Sec. 4 (1).

121. Montana guidelines, Sec. 5 (2).

122. See note 69.

123. Indiana law, Sec. 13-1-10-6.

124. This is discussed in Yost, "NEPA's Progeny" (See note 5).

125. NEPA guidelines, Sec. 1500.5 (a) (2).

126. Only one local government has used it (See note 51).

127. Maryland law, Sec. 449 (A).

128. Minnesota law, Sec. 4 (1).

129. Connecticut law, Sec. 3.

130. It should be noted that some local governments have adopted EIS procedures independently of State requirements.

131. For a thorough discussion of this trend, see The Quiet Revolution in Land Use Control, prepared for the Council on Environmental Quality by Fred Bosselman and David Callies (Government Printing Office, Washington, 1971).

132. Act 250 of the Vermont Laws, 1970; Vt. Stat. Ann. tit. 10, Secs. 6001 et seq.

133. The Quiet Revolution, pp. 54-89.

134. Maine Site Location of Development Act of 1970; Me. Rev. Stat. Ann. tit. 38, Secs. 481 et seq.

135. The Quiet Revolution, pp. 187-199.

136. Hawaii Rev. Stat. ch. 205.

137. The Quiet Revolution, pp. 5-34.

138. NEPA, Sec. 102 (2).

139. Executive Order 11514.

140. NEPA guidelines, Sec. 1500.11 (f).

141. Environmental Quality: The Third Annual Report of the Council on Environmental Quality. Government Printing Office, Washington, 1972, p. 246.

142. 42 U.S.C. 4332, 83 Stat. 853, Pub. L. 91-604.

143. CEQ fourth annual report (See note 3), p. 245.

144. Comptroller General of the U.S., Adequacy of Selected Environmental Statements Prepared under the National Environmental Policy Act of 1969, Report No. B-170186, to the Subcommittee on Fisheries and Wildlife Conservation of the Committee on Merchant Marine and Fisheries, U. S. House of Representatives, November 27, 1972.

145. McCloskey, Michael, "Reorganizing the Federal Environmental Effort," Duquesne Law Review, 11, No. 4, p. 484.

146. Environmental Report 1972. The Environmental Quality Board, Santurce, 1972, p. 6.

147. Environmental Quality Council, First Annual Report. Environmental Quality Council, Helena, 1972, p. 128.

148. Indiana, Michigan, Minnesota, Montana, New Mexico, and Puerto Rico.

149. Connecticut, Hawaii, Maryland, and Texas.

150. Massachusetts and Virginia.

151. California law, Sec. 21083.

152. California law, Sec. 21108.

153. However, under another provision of the California law (Sec. 21152), local governments approving projects subject to the EIS requirement must file notice with the County clerk. One of the purposes of this requirement is to start the running of a 30-day statute of limitations on challenges to a project. If the notice is not filed, the statute of limitations does not begin to run. Thus, public agencies have an incentive to comply with this provision. However, the County clerk is not

required to take any special measures to publicize the action.

154. California law, Sec. 21161.

155. The State Office of Planning and Research receives copies of impact statements generated by State (but not local) agencies and comments on them from the standpoint of State land use and population policy.

156. Although State administrative decisions are subject to review by the Governor or by various State boards and commissions.

157. Hawaii executive order, Sec. 1.

158. Memorandum from the Governor to State agencies, February 9, 1972, transmitting the North Carolina guidelines.

159. Maryland law, Sec. 451 (A) (13) (D).

160. Massachusetts law, Sec. 62.

161. Minnesota law, Sec. 4 (9).

162. NEPA, Sec. 102 (2) (C).

163. CEQ fourth annual report (See note 3), p. 236.

164. These changes are discussed in CEQ's fourth annual report, pp. 234-236.

165. California law, Sec. 21105.

166. California guidelines, Sec. 15164.

167. Michigan guidelines, Sec. 3.

168. North Carolina guidelines, Sec. II (A).

169. Puerto Rico guidelines, Sec. 5. This wording may be the result of inadequate translation from the original Spanish document.

170. A California EIR Monitor will be published twice-monthly by the Resources Agency beginning in January 1974; subscriptions will cost $20 a year. North Carolina includes such a listing in its Environmental Bulletin.

171. North Carolina law, Sec. 1.11 (2) (d).

172. Massachusetts guidelines, Sec. 7.3.

173. Washington guidelines, Sec. 2 (4).

174. Hawaii executive order, Sec. 1 (d) (3).

175. Maryland law, Sec. 451 (A) (3).

176. Montana law, Sec. 69-6517.

177. Montana guidelines, Sec. 5 (C).

178. Washington guidelines, Part 6.

179. Minnesota law, Sec. 4 (3).

180. NEPA guidelines, Sec. 1500.11 (c).

181. Hawaii specifies a minimum period of 20 days; Maryland, Wisconsin, Montana, Michigan, Massachusetts, and Puerto Rico, 30 days; Connecticut and North Carolina, 45 days; and Washington, 60 days. The time period is usually measured from the date of publication of the EIS or its receipt by the coordinating agency. Some States provide for extensions of time at the request of a reviewing agency, but not by the public.

182. California guidelines, Sec. 15160, which explains that "These Guidelines do not provide a fixed period of time for this review and consultation process in order to allow variations according to local needs . . . the time limits in the federal guidelines provide an example that may be followed in some situations." The proposed amendments (see note 18) call for a minimum period of 30 days.

183. Wisconsin law, Sec. 1.11 (d).

184. California guidelines, Sec. 15165.

185. Massachusetts guidelines, Sec. 7.5.

186. Michigan guidelines, Sec. 3.

187. As quoted by Gladwin Hill, Madman in a Lifeboat: Issues of the Environmental Crisis (John Day, New York, 1973), p. 112.

188. Some of these problems are discussed in the Federal context by Anderson, NEPA in the Courts (See note 10).

189. Mechanisms set up under Office of Management and Budget (OMB) Circular A-95. See NEPA guidelines, Sec. 1500.9 (c).

190. One State official, for instance, asked for "a list of the states that have adopted such procedures and copies of any implementing documents that other states send you. This would cut out the necessity for each state to write other states for similar information. This information is needed as soon as possible, not when your study is completed late in 1973."

191. Walker, Jack L., "The Diffusion of Innovations Among the American States." The American Political Science Review, 63, No. 3, pp. 893-898 (1969).

192. The only NEPA-type legislation outside the U. S. that has come to our attention is Quebec's Environmental Quality Act (Loi de la qualité de l'environnement), Chapter 49 of the Statutes of 1972. Section 22 of that law reads in part:

> The Director [of Environment Protection] shall . . . require a study to be made on the impact that the carrying out of the project will have on the environment and may require the applicant to carry out certain research or experiments which he indicates respecting the project . . .

The Quebec requirement appears to apply to a wide range of land and industrial developments. We understand that the Federal Governments of Canada and Australia have also adopted EIS procedures administratively.

193. "Guidelines--Environmental Impact Statement," n.d. We appreciate the help of David F. Moore, North Jersey Conservation Foundation, in bringing the New Jersey requirements to our attention. The Foundation (300 Mendham Rd., Morristown, New Jersey 07960) has issued a pamphlet discussing the EIS process: "The Process of Environmental Assessment--Options and Limits," by Richard E. Galantowicz, 1972.

194. By Norman E. Hill. Excerpted from Second National Symposium on State Environmental Legislation, April 9-12, 1973, Arlington, Virginia. Council of State Governments (1150 17th St., N. W., Washington, D. C. 20036), 1973, pp. 20-22.

SECTION IX

APPENDICES

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APPENDIX A

STATE REQUIREMENTS AND PROPOSALS FOR ENVIRONMENTAL IMPACT STATEMENTS

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State	EIS Requirement and/or Proposals	Contact
Alabama	None	Edwin G. Hudspeth Policy Studies Division Alabama Development Office State Office Building Montgomery, AL 36104
Alaska	None. However, Department of Environmental Conservation reviews projects which have "potential for environmental impact" and submits comments to appropriate agencies.	Jerry Reinwand Special Assistant to Commissioner Department of Environmental Conservation Pouch O Juneau, AK 99801
Arizona	No general requirement. Game and Fish Commission on July 2, 1971 adopted a policy requiring Game and Fish Department to prepare impact statements on proposed water-oriented development projects. Conservationists have proposed a State policy act similar to California's.	Robert D. Curtis, Chief Wildlife Planning and Development Division Arizona Game and Fish Department 2222 W. Greenway Rd. Phoenix, AZ 85023
Arkansas	None	Harold E. Alexander Special Advisor, Env'l Affairs Arkansas Department of Planning Game and Fish Building Little Rock, AR 72201

State	EIS Requirement and/or Proposals	Contact
California	California Environmantal Quality Act of 1970 (Cal. Pub. Res. Code Secs. 21000-21174). See text.	Norman E. Hill, Special Assistant to the Secretary for Resources The Resources Agency 1416 Ninth St. Sacramento, CA 95815
Colorado	No current requirement. A proposed Colorado Environmental Policy Act (Senate Bill 43, 1973 Sess.) would require an EIS on public and private actions approved by any unit of State or local government.	David F. Morrissey Assistant Director Colorado Legislative Council 46 State Capitol Denver, CO 80203
Connecticut	Executive Order No. 16, October 4, 1972, is currently in force. The Connecticut Environmental Policy Act (Pub. Act No. 73-562), approved in 1973, will not take effect until February 1, 1975. See text.	George Russell, Director Education Programs Department of Environmental Protection State Office Building Hartford, CT 06115
Delaware	No general requirement, and none proposed. Under the Delaware Coastal Zone Act (Del. Code Ann. tit. 7, Secs. 7001 et seq.), applicants for coastal	John Sherman, Chief Coastal Zone Management Delaware State Planning Office 530 S. duPont Highway Dover, DE 19901

State	EIS Requirement and/or Proposals	Contact
	zone permits must submit an EIS on proposed manufacturing projects.	
District of Columbia	No current requirement. A proposal to require an EIS for "major construction projects" is under consideration.	Malcolm C. Hope, Director Office of Environmental Planning Department of Environmental Services 415 12th St., N. W. Washington, D. C. 20004
Florida	No requirement. A bill similar to NEPA was introduced in the 1972 session of the Legislature, but failed to pass.	James K. Lewis, Director of Staff Committee on Environmental Pollution Control Florida House of Representatives 217 Holland Building Tallahassee, FL 32304
Georgia	No general requirement. Impact statements are required, however, for projects proposed to be undertaken by the Georgia Tollways Authority. The Office of Planning and Research, Department of Natural Resources, is considering drafting legislation to require an EIS for certain state and local actions.	James T. McIntyre, Director Office of Planning and Budget Executive Department 270 Washington St., S. W. Atlanta, GA 30334

State	EIS Requirement and/or Proposals	Contact
Hawaii	Executive Order, August 23, 1971. See text. Nine bills to give the requirement a statutory basis were introduced in the 1973 Legislature, but only one was reported from committee (House Bill 1522). The Temporary Commission for Statewide Environmental Policy Act, including an EIS requirement applicable to private projects and local actions.	Richard E. Marland Interim Director Office of Environmental Quality Control, Office of the Governor 550 Halekauwila St., Room 301 Honolulu, HI 96813
Idaho	None	Glenn W. Nichols, Director State Planning and Community Affairs Agency State House Boise, ID 83707
Illinois	No requirement. Governor Richard B. Ogilvie proposed legislation similar to NEPA in 1972, but it failed to pass.	Michael Schneiderman, Director Institute for Environmental Quality 309 W. Washington St. Chicago, IL 60606

State	EIS Requirement and/or Proposals	Contact
Indiana	Public Law 98, 1972 (Ind. Code 13-1-10). Not yet implemented. See text.	Ralph C. Pickard, Technical Sec'y Environmental Management Board 1330 W. Michigan St. Indianapolis, IN 46206
Iowa	No requirement. There has been "considerable discussion" among State officials of an EIS requirement, but it appears unlikely that the Legislature will take any action in the near future.	Peter R. Hamlin Environmental Coordinator Office for Planning and Programming 523 E. 12th St. Des Moines, IA 50319
Kansas	None	John P. Halligan, Director Planning Division Department of Economic Development State Office Building Topeka, KS 66612
Kentucky	None	Bernard T. Carter Executive Assistant Department of Natural Resources Frankfort, KY 40601
Louisiana	No requirement. Legislation to establish a general EIS program (House Bill 1150) was defeated in the 1972 Session of the Legislature.	Eddie L. Schwertz, Jr. Assistant Director Office of State Planning P. O. Box 44425 Baton Rouge, LA 70804

State	EIS Requirement and/or Proposals	Contact
Maine	None. There was some interest among conservationists in introducing a bill in the 1973 Session of the Legislature, but this legislation did not materialize.	William R. Adams, Jr. Commissioner Department of Environmental Protection Augusta, ME 04330
Maryland	Maryland Environmental Policy Act (Md. Ann. Code art. 41, Secs. 447-453), approved in 1973. See text.	Vladimir Wahbe Secretary of State Planning 301 W. Preston St. Baltimore, MD 21201
Massachusetts	Mass. Gen. Laws Ann. ch. 30, Secs. 61-62. See text.	Harley F. Laing, Legal Counsel Executive Office of Environmental Affairs 18 Tremont St. Boston, MA 02408
Michigan	Executive Order 1973-9. See text.	Terry L. Yonker, Executive Sec'y Environmental Review Board Department of Management and Budget Lansing, MI 48913
Minnesota	Chap. 412, Laws 1973. See text.	Joseph E. Sizer, Director Environmental Planning State Planning Agency 802 Capitol Square Building St. Paul, MN 55101

State	EIS Requirement and/or Proposals	Contact
Mississippi	None. A proposal to create a coastal zone management program, including EIS requirements, died in the 1973 Session of the Legislature.	Edward A. May, Jr., Assistant to the Coordinator Federal-State Programs Office of the Governor 510 Lamar Life Building Jackson, MS 39201
Missouri	No requirement. Two bills similar to NEPA were introduced in the 1972 Session of the General Assembly; both died in committee. The State administration has created an Environmental Impact Statement Task Force to evaluate other State policy acts and make recommendations.	R. Brinkworth Chief Planning Specialist Comprehensive Health Planning Department of Community Affairs 505 Missouri Blvd. Jefferson City, MO 65101
Montana	Montana Environmental Policy Act (Mont. Rev. Codes Ann. Secs. 69-6501 et seq.), 1971. See text.	Fletcher E. Newby Executive Director Environmental Quality Council Capitol Station Helena, MT 59601
Nebraska	No general requirement, and none proposed. Department of Roads prepares impact statements on State-funded highway projects.	Robert D. Kuzelka Comprehensive Planning Coordinator Office of Planning and Programming Box 94601, State Capitol Lincoln, NB 68509

State	EIS Requirement and/or Proposals	Contact
Mississippi	None. A proposal to create a coastal zone management program, including EIS requirements, died in the 1973 Session of the Legislature.	Edward A. May, Jr., Assistant to the Coordinator Federal-State Programs Office of the Governor 510 Lamar Life Building Jackson, MS 39201
Missouri	No requirement. Two bills similar to NEPA were introduced in the 1972 Session of the General Assembly; both died in committee. The State administration has created an Environmental Impact Statement Task Force to evaluate other State policy acts and make recommendations.	R. Brinkworth Chief Planning Specialist Comprehensive Health Planning Department of Community Affairs 505 Missouri Blvd. Jefferson City, MO 65101
Montana	Montana Environmental Policy Act (Mont. Rev. Codes Ann. Secs. 69-6501 et seq.), 1971. See text.	Fletcher E. Newby Executive Director Environmental Quality Council Capitol Station Helena, MT 59601
Nebraska	No general requirement, and none proposed. Department of Roads prepares impact statements on State-funded highway projects.	Robert D. Kuzelka Comprehensive Planning Coordinator Office of Planning and Programming Box 94601, State Capitol Lincoln, NB 68509

State	EIS Requirement and/or Proposals	Contact
New Hampshire	No requirement. Requiring impact statements on major land developments, whether private or public, is one of the priorities of a legislative coalition formed by the State's major environmental groups (contact: Miriam Jackson, Counsel, SPACE, P. O. Box 757, Concord, NH 03301).	Raymond P. Gerbi, Jr. Assistant to the Director of Comprehensive Planning Office of the Governor Concord, NH 03301
New Jersey	No general requirement. Legislation is being prepared in both houses of the Legislature. A special EIS procedure applies to a 35-mile extension of the New Jersey Turnpike. The Department of Environmental Protection has prepared guidelines for an environmental impact procedure and distributed copies to local agencies for their guidance. In addition, the Department is "suggesting" that such assessments be made on major industrial construction projects prior to issuance of air or water pollution permits. Several local jurisdictions require an EIS as part of the zoning and subdivision process.193	Alfred T. Guido Special Assistant to the Commissioner Department of Environmental Protection Trenton, NJ 08625

State	EIS Requirement and/or Proposals	Contact
New Mexico	Environmental Quality Control Act (N. M. Stat. Ann. Secs. 12-20-1 et seq.). The EIS requirement in the law has been suspended. See text.	David W. King State Planning Officer State Planning Office Santa Fe, NM 87501
New York	No general requirement. An administrative regulation (Budget Request Manual, Item 73) requires environmental review and clearance for State-funded capital construction projects. A bill for a State environmental policy act, which included an EIS requirement, passed both houses of the Legislature in 1972 (Assembly Bill 9245-A), but was vetoed by Governor Rockefeller, who said that it would duplicate existing requirements, confuse responsibility among State agencies, and increase expenditures "at a time of protracted fiscal difficulty."	Terence P. Curran Director of Environmental Analysis Department of Environmental Conservation Albany, NY 12201

State	EIS Requirement and/or Proposals	Contact
North Carolina	North Carolina Environmental Policy Act (N. C. Gen. Stat. Secs. 113A et seq.), 1971. See text.	Arthur W. Cooper, Assistant Secretary for Resource Management Department of Natural and Economic Resources P. O. Box 27687 Raleigh, NC 27611
North Dakota	No general requirement, and none pending. A special EIS procedure applies to certain waste water treatment facilities.	Norman L. Peterson, Director Division of Water Supply and Pollution Control Department of Health State Capitol Bismarck, ND 58501
Ohio	No requirement. Governor John J. Gilligan has requested his executive department to institute an EIS program. Bills have been drafted for a State environmental policy act, but no action is expected in the near future.	Alan L. Farkas Deputy Director for Policy Development Ohio Environmental Protection Agency 450 E. Town St. Columbus, OH 43216

State	EIS Requirement and/or Proposals	Contact
Oklahoma	None	Don N. Strain, Director State Grant-in-Aid Clearinghouse Office of Community Affairs and Planning 4901 Lincoln Blvd. Oklahoma City, OK 73105
Oregon	No requirement. Bills for a State environmental protection act, including broad EIS requirements, were introduced in 1971 (Senate Bill 49) and 1973 (House Bill 2921), but not enacted. The potential cost involved was reportedly a significant factor in their defeat. Governor Tom McCall supports the concept.	Kessler R. Cannon Assistant to the Governor, Natural Resources State Capitol Salem, OR 97310
Pennsylvania	None	Thomas Dolan, Chairman Citizens' Advisory Council Department of Environmental Resources c/o EPIC 313 S. 16th St. Philadelphia, PA 19102

State	EIS Requirement and/or Proposals	Contact
Puerto Rico	Public Environmental Policy Act (P. R. Laws Ann. tit. 12, Secs. 1121 et seq.), 1970. See text.	Santos Rohena Betancourt Acting Executive Director Environmental Quality Board 1550 Ponce de Leon Ave., 4th Fl. Santurce, PR 00910
Rhode Island	No requirement. A bill to create a general EIS program was introduced in the 1972 Session of the Legislature (H. 5179), but was not reported from committee.	Daniel W. Varin, Chief Statewide Planning Department of Administration 265 Melrose St. Providence, RI 02907
South Carolina	No requirement. A bill to require EIS review for major private and public projects has been introduced in the 1973 Session of the Legislature.	Gene Boles, Principal Planner, Environmental Policy Office of Planning Division of Administration Columbia, SC 29211
South Dakota	None	D. R. Hood, Program Administrator Land Use Planning State Planning Agency Office of the Governor Pierre, SD 57501

State	EIS Requirement and/or Proposals	Contact
Tennessee	No requirement. Governor Winfield Dunn's administration has been considering proposing an act similar to NEPA; no decision has been taken.	Shelley Stiles Policy Planning Staff Office of the Governor 1025 Andrew Jackson Bldg. Nashville, TN 37219
Texas	"Policy for the Environment." See text.	Ed Grisham, Director Division of Planning Coordination Box 12428, Capitol Station Austin, TX 78711
Utah	No requirement. A bill to require an EIS on State agency projects failed to reach the floor of the Legislature in 1973. The state planning office is preparing an executive order which is expected to be implemented before the end of the year.	Grover Thompson Office of the State Planning Coordinator 118 State Capitol Salt Lake, UT 84114
Vermont	None. While under Act 250 (Vt. Stat. Ann. titl 10, ch. 151) proposals for projects involving significant changes in land use require scrutiny as to environmental impact, no formal written document similar to an EIS is necessary. See p. 25.	Schuyler Jackson Assistant Secretary Agency of Environmental Conservation Montpelier, VT 05602

State	EIS Requirement and/or Proposals	Contact
Virginia	Virginia Environmental Policy Act (Chap. 384, Acts 1973). See text.	Robert H. Kirby, Director Division of State Planning and Community Affairs 1010 James Madison Building Richmond, VA 23219
Washington	Impact statements are required under the State Environmental Policy Act (Wash. Rev. Code Ann. ch. 43.21C), and the Highway Construction Environmental Review Law (Wash. Rev. Code Ann. Secs. 47.04.110-47.04.130), both enacted in 1971. While it does not require an EIS, the Shoreline Management Act of 1971 (Chap. 286, Laws 1971) is administered to "frequently require" impact statements to accompany the review of shoreline permits sanctioned by local officials.	Dennis L. Lundblad Office of Planning and Program Development Department of Ecology Olympia, WA 98504
West Virginia	None	Ira S. Latimer, Director Department of Natural Resources Charleston, WV 25305

State	EIS Requirement and/or Proposals	Contact
Wisconsin	Wisconsin Environmental Policy Act (Wis. Stat. Sec. 11.1; Chap. 274, Laws 1971), and Wis. Stat. Secs. 23.11 (5), 30.10 (4), and 31.06 (3); Chap. 273, Laws 1971. See text.	L. P. Voigt, Secretary Department of Natural Resources P. O. Box 450 Madison, WI 53701
Wyoming	None	Vincent J. Horn, Jr. Administrative Assistant to the Governor Capitol Building Cheyenne, WY 82001

APPENDIX B

SUGGESTED STATE ENVIRONMENTAL POLICY ACT

The Suggested State Environmental Policy Act was drafted in a workshop at the Second National Symposium on State Environmental Legislation, held at Arlington, Virginia, April 10-12, 1973. The symposium was co-sponsored by the Council of State Governments, CEQ, EPA, and the Department of the Interior. Co-chairmen of the workshop were Timothy Atkeson, General Council, CEQ, and Norman E. Hill, Special Assistant to the Secretary for Resources, State of California.

The suggested act is included in the Council of State Government's 1974 Suggested State Legislation (Volume XXXIII).

EXPLANATORY NOTE[194]

The suggested act follows the approach of the National Environmental Policy Act in being fairly simple, leaving the details to be filled in by administrative guidelines. The workshop delegates believed that individual states would need flexibility in adjusting the many minor details to their individual situations.

ISSUES. In considering a proposed law dealing with environmental impact statements, a state should consider the following important issues. The Suggested State Environmental Policy Act represents the workshop's proposed solution to these issues. Where there were differences of opinion on significant issues, alternative solutions to the problems are shown in brackets.

1. To which levels of government should the act apply? A state should consider whether it wants to apply the requirement for environmental impact statements only to state level agencies or whether it wishes to apply the requirement to local agencies also. The resolution of this issue is not clear in most of the state statutes adopted to the date of this writing. The California act applies explicitly to both state and local agencies.

2. Should the act apply only to public works construction or should it also apply to regulatory activities and approval of private actions? NEPA has always applied to direct government operations and to regulatory and licensing activities. The California act was amended in 1972 to make clear that it applied to regulatory activities and the granting of discretionary approvals to private activities.

3. Should the act apply only to major actions or should it apply to all actions which may have a significant effect on the environment? NEPA applies only to major actions. This follows the belief that large activities will be the main ones that have significant effects on the environment and that government will become bogged down if it has to prepare and review too many reports. Limiting the requirement to major actions is a simple way to screen out actions which do not require the preparation of an impact statement. On the other hand, there may be many small projects which may have a large effect on the environment. California provides no size limitation and requires reports on all actions which may have a significant effect on the environment.

4. Are there activities which should be specifically excluded from the operation of the act? A state may wish to exempt emergency actions because there may not be sufficient time for a governmental agency to evaluate environmental factors before taking action. The suggested act follows the California precedent in exempting ministerial actions. With respect to these activities it was believed that governmental powers are too narrowly confined to enable the agency to shape the activity to improve the effect on the environment.

   The Guidelines implementing NEPA and the California act both exclude environmentally regulatory actions such as setting standards for air and water pollution control. This exclusion under NEPA is currently the subject of litigation. The requirement for an impact statement was not thought to be necessary for these regulatory actions because the programs were conducted for the express purpose of protecting the environment and because the programs have considered the environmental effects of their activities since their beginnings. Whatever benefits

might be gained from the formal preparation of impact statements could be lost as a result of the delays in enforcement. On the other hand, opponents of these exclusions have claimed that these regulatory actions may have adverse effects on the environment that were not considered by the regulatory agency or were not known to the public at the time the actions were taken. The suggested act provides for this exclusion.

5. Should the environment be defined to include the totality of man's surroundings or should it be limited to physical factors? In order to keep the requirement for impact statements manageable, the suggested act limits the definition of the environment to physical factors. Once a physical effect of an action is identified, social and economic factors can be considered to determine whether that effect is significant and whether an impact statement should be prepared. Environment was not limited to natural factors because most of the country's population lives in urban areas, and man-made surroundings form a large part of the environment which affect these people.

6. Should environmental effects be weighed against social and economic considerations? The suggested act provides that environmental protection should be given appropriate weight with social and economic considerations in overall public policy. This follows the belief that public policy calls for the balancing of many potentially competing factors and that environmental protection does not require shutting down the economy.

7. Should the act specifically require public hearings on environmental impact statements? Resolution of this decision was deliberately left to guidelines to allow specific procedures to be established in conformity with individual state practices.

8. Should the act provide for the charging of fees to applicants or should the costs of protecting the environment be borne by the public as a whole? The suggested act allows for the charging of fees to the sponsors of projects which require governmental approval. Participants in the workshop believed that a project which will affect the environment should bear the costs of analyzing its effects on the environment.

9. Should the act provide a statute of limitations for legal actions brought under the act? Although the workshop believed that a statute of limitations is necessary to provide certainty after a reasonable period, no statute of limitations was included in the act. Due to the variation in statutes of limitation among the states, the resolution of this issue is deliberately left to each individual state. This subject was believed to be too complicated and calls for too much variation to allow a proposed solution in this suggested act.

SUGGESTED STATE ENVIRONMENTAL POLICY ACT

AN ACT to establish a State Environmental policy.

Section 1. Short Title

This Act may be cited as the "[Name of State] Environmental Policy Act."

Section 2. Purpose

The purposes of this Act are: to declare a State policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and stimulate the health and welfare of man; and to enrich the understanding of the ecological systems and natural resources important to the people of the State.

Section 3. Findings and Declaration of State Environmental Policy

The Legislature finds and declares as follows:

(a) The maintenance of a quality environment for the people of this State that at all times is healthful and pleasing to the senses and intellect of man now and in the future is a matter of statewide concern.

(b) Every citizen has a responsibility to contribute to the preservation and enhancement of the quality of the environment.

(c) There is a need to understand the relationship between the maintenance of high-quality ecological systems

and the general welfare of the people of the State, including their enjoyment of the natural resources of the State.

(d) The capacity of the environment is limited, and it is the intent of the Legislature that the government of the State take immediate steps to identify any critical thresholds for the health and safety of the people of the State and take all coordinated actions necessary to prevent such thresholds from being reached.

(e) It is the intent of the Legislature that to the fullest extent possible, the policies, statutes, regulations, and ordinances of the State [and its political subdivisions] should be interpreted and administered in accordance with the policies set forth in this Act.

(f) It is the intent of the Legislature that the protection and enhancement of the environment shall be given appropriate weight with social and with economic considerations in public policy. Social, economic, and environmental factors shall be considered together in reaching decisions on proposed public activities.

(g) It is the intent of the Legislature that all agencies conduct their affairs with an awareness that they have an obligation to protect the environment for the use and enjoyment of this and all future generations.

(h) It is the intent of the Legislature that all agencies which regulate activities of private individuals, corporations, and public agencies which are found to affect the quality of the environment shall regulate such activities so that major consideration is given to preventing environmental damage.

Section 4. Definitions

Unless the context otherwise requires, the definitions in this section shall govern the construction of the following terms as used in this Act:

(a) "Agency" means the Executive and Administrative Departments, Office, Boards, Commissions, and other units of the State Government, and any such bodies created by the State.[1]

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[1]Use the first definition of "agency" if the act is intended to apply only to actions of State agencies.

[(a) "Agency" means any state agency, board or commission any any local agency, including any city, county, and other political subdivision of the State.][1a]

(b) "Actions" include:

(1) Proposals for legislation.

(2) New and continuing projects or activities directly undertaken by any public agency; or supported in whole or part through contracts, grants, subsidies, loans, or other forms of funding assistance from one or more public agencies; or involving the issuance to a person of a lease, permit, license, certificate or other entitlement for use by one or more public agencies.

(3) Policy, regulations, and procedure-making.

(c) "Actions" do not include:

(1) Enforcement proceedings or the exercise of prosecutorial discretion in determining whether or not to institute such proceedings;

(2) Actions of a ministerial nature, involving no exercise of discretion.

(3) Emergency actions responding to an immediate threat to public health or safety.

[(4) Actions of an environmentally protective regulatory nature.[2]]

(d) "Environment" means the physical conditions which will be affected by a proposed action, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance, [existing patterns of population concentration, distribution, or growth, and existing community or neighborhood character.]

[1a]Use the alternative definition of "agency" if the act is intended to apply to actions of both state and local agencies.

[2]This provision is highlighted as a controversial feature which states may choose to include.

(e) "Environmental impact statement" means a detailed statement setting forth the matters specified in section 5(b) of this Act. It includes any comments on a draft environmental statement which are received pursuant to section 5(c) of this Act, and the agency's response to such comments, to the extent that they raise issues not adequately resolved in the draft environmental statement.

(f) "Draft environmental impact statement" means a preliminary statement prepared pursuant to section 5(c) of this Act.

Section 5. Environmental Responsibility of Agencies

(a) Agencies shall use all practicable means to realize the policies and goals set forth in this Act, and to the maximum extent possible shall take actions and choose alternatives which, consistent with other essential considerations of state policy, minimize or avoid adverse environmental effects.

(b) All agencies shall prepare, or cause to be prepared by contract, an environmental impact statement on any [major] action they propose or approve which may have a significant effect on the environment. Such a statement shall include a detailed statement setting forth the following:

(1) a description of the proposed action and its environmental setting;

(2) the environmental impact of the proposed action including short term and long term effects;

(3) any adverse environmental effects which cannot be avoided should the proposal be implemented;

(4) alternatives to the proposed action;

(5) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented;

(6) mitigation measures proposed to minimize the environmental impact; and

(7) the growth-inducing aspects of the proposed action.

Such a statement shall also include copies or a summary of the substantive comments received by the agency pursuant to subsection (c) of this section, and the agency response to such comments. The purpose of an environmental impact statement is to provide detailed information about the effect which a proposed action is likely to have on the environment, to list ways in which any adverse effects of such an action might be minimized and to suggest alternatives to such an action.

(c) As early as possible in the formulation of a proposal for action that is likely to require the preparation of an environmental impact statement and in all cases prior to preparation of an environmental impact statement, the responsible agency shall prepare or cause to be prepared a draft environmental statement describing in detail the proposed action and reasonable alternatives to the action, and briefly discussing, on the basis of information then available to the agency, the remaining items set forth in the preceding subsection. The purpose of a draft environmental statement is to inform the public and other public agencies as early as possible about proposed actions that may significantly affect the quality of the environment, and to solicit comments which will assist the agency in determining the environmental consequences of the proposed action. The draft statement should resemble in form and content the environmental impact statement to be prepared after comments have been received and considered pursuant to section 5(b) of this Act; however, the length and detail of the draft environmental statement will necessarily reflect the preliminary nature of the proposal and the early stage at which it is prepared. The draft statement shall be circulated for comment among other public agencies which have jurisdiction by law or special expertise with respect to any environmental impact involved and shall be made available for comment by relevant federal agencies and interested members of the public.

(d) The environmental impact statement, prepared pursuant to subsection (b) of this section, together with the comments of public and Federal agencies and members of the public, shall be filed with the [Office of the Governor] and made available to the public at least 30 days prior to taking agency action on the proposal which is the subject of the environmental impact statement.

(e) An agency may charge a fee to an applicant in order to recover the costs incurred in preparing or

causing to be prepared an environmental impact statement on the action which the applicant requests from the agency.

(f) When an agency decides to carry out or approve an action which has been the subject of an environmental impact statement, it shall make an explicit finding that the requirements of subsection (a) of this section have been met and that all feasible action will be taken to minimize or avoid environmental problems that are revealed in the environmental impact statement process.

Section 6. Guidelines and Agency Procedures

(a) After conducting public hearings the [Governor] shall issue Guidelines through regulations implementing the provisions of this Act within [90 days] after the effective date of this Act.

(b) The guidelines issued by the [Governor] shall specifically include:

(1) Interpretation of terms used in this act including criteria for determining whether or not a proposed action [may be major or] may have a significant effect on the environment with examples. Social and economic factors may be considered in determining the significance of an environmental effect;

(2) On the basis of such criteria, identification of those typical agency actions that are likely to require preparation of environmental impact statements;

(3) A list of classes of actions which have been determined not to have a significant effect on the environment and which thus do not require environmental impact statements under this act. In adopting the Guidelines, the [Governor] shall make a finding that each class of actions in this list does not have a significant effect on the environment;

(4) The typical associated environmental effects, and methods for assessing such effects, of actions determined to be likely to require preparation of such statements;

(5) Procedures for obtaining comments on environmental impact statements, including procedures for providing public notice of agency decisions with respect to preparation of a draft environmental statement, or, in the case of major or controversial actions determined not to involve a significant environmental impact, procedures for announcing the decision that no environmental impact statement will be prepared.

(c) Within [90 days] after the [Governor] adopts the Guidelines, the relevant agencies shall adopt and publish procedures for implementation of this Act consistent with the Guidelines adopted by the [Governor].

(d) Each agency shall conduct a public hearing in connection with adopting the procedures required by this section.

Section 7. Limitations[3]

(a) In order to avoid duplication of effort and to promote consistent administration of Federal and State environmental policies, the environmental impact statement required by Section 5 of this Act need not be prepared with respect to actions for which a detailed statement is required to be prepared pursuant to the requirements of the National Environmental Policy Act of 1969 and implementing regulations thereto, provided that such statement complies with the requirements of this Act and the guidelines adopted pursuant thereto.

(b) The requirements of Section 5 of this Act shall apply to actions undertaken or approved prior to the date of enactment of this Act only if:

(1) The responsible agency proposes a modification of the action and the modification may result in a significant effect on the environment, or

(2) A substantial portion of the public funds allocated for the project have not been

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[3]In addition to these limitations, a state may wish to include a specific statute of limitations to govern legal actions brought under this act.

spent and it is still feasible either to modify the project in such a way as to mitigate potentially adverse environmental effect or to choose a feasible and less environmentally damaging alternative to the project.

*U.S. GOVERNMENT PRINTING OFFICE:1974 546-317/326 1-5